

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY GENTRY, on behalf of himself and all	§	
others similarly situated,	§	
	§	
Plaintiffs,	§	
v.	§	C. A. NO. 3:19-cv-00320
	§	
HAMILTON-RYKER IT SOLUTIONS, LLC,	§	
	§	
Defendant.	§	
	§	

UNOPPOSED RULE 25 MOTION TO SUBSTITUTE ESTATE OF TERRY GENTRY

Terry Gentry passed away on January 12, 2022. (*See* Ex. A, Declaration of Kaylie Gentry.)

The Estate of Terry Gentry has retained the attorneys in this lawsuit to continue representation of Plaintiff's interest after death.

Pursuant to Rule 25 of the Federal Rules of Civil Procedure:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative.

FLSA claims survive death. *See e.g. Daigle v. Angeline Enters., Inc.*, No. 6:14-cv-1008, 2015 WL 7271746, at *1 (M.D. Fla. Oct. 27, 2015) ("a claim for compensation due under the FLSA survives the death of the employee."); *Acebal v. United States*, 60 Fed. Cl. 551, 557 (2004); *Lai Yoong Low v. Tian Yu, Inc.*, No. 12 Civ.7237(HBP), 2015 WL 1011699, at *3 (S.D.N.Y. March 9, 2015); *McFeely v. Jackson St. Entm't, LLC*, 2014 WL 4182231, at *2 (D. Md. Aug. 19, 2014); *Veliz v. Cintas Corp.*, 2008 WL 2811171, at *2, n.2 (N.D. Cal. July 17, 2008).

Plaintiff's motion is timely, as neither party has filed a statement noting the death. *See* Fed. R. Civ. P. 25(a)(1).

The Estate of Terry Gentry is a proper party, as Terry Gentry died leaving a holographic will naming his two children as his beneficiaries, which will has not yet but will be submitted to probate. (*See* Ex. A, Declaration of Kaylie Gentry.)

Defendant does not oppose this Motion to Substitute.

Accordingly, Plaintiffs respectfully request that the Court grant this Motion to Substitute, and for such other and further relief to which Plaintiffs have shown themselves justly entitled.

Dated: April 8, 2022

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF AND PUTATIVE
COLLECTIVE ACTION MEMBERS

CERTIFICATE OF CONFERENCE

On April 6, 2022, I confirmed with counsel for Defendant that Defendant is not opposed to the relief requested in this Motion.

s/Melinda Arbuckle

Melinda Arbuckle

CERTIFICATE OF SERVICE

On April 8, 2022, I filed the foregoing document with the Clerk of Court for the Southern District of Texas using the CM/ECF method, which has served all counsel of record with a true and correct copy of this document electronically.

s/Melinda Arbuckle

Melinda Arbuckle